

basis as his father. If more than one parent qualifies as the officer's mother, or as his father, payment shall be made to the one with whom the officer considered himself, as of the injury date, to have the closest relationship, except that any biological or legally adoptive parent whose parental rights have not been terminated as of the injury date shall be presumed rebuttably to be such one.

(b) Any amount payable with respect to a minor or incompetent shall be paid to his legal guardian, to be expended solely for the benefit of such minor or incompetent.

(c) If more than one individual should qualify for payment—

(1) Under the Act, at 42 U.S.C. 3796(a)(4)(i), payment shall be made to each of them in equal shares, except that, if the designation itself should manifest a different distribution, payment shall be made to each of them in shares in accordance with such distribution; or

(2) Under the Act, at 42 U.S.C. 3796(a)(4)(ii), payment shall be made to each of them in equal shares.

[73 FR 76535, Dec. 17, 2008]

#### **§ 32.17 Request for Hearing Officer determination.**

In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall request a Hearing Officer determination under subpart E of this part. Consistent with § 32.8, any denial that is not the subject of such a request shall constitute the final agency determination.

### **Subpart C—Disability Benefit Claims**

#### **§ 32.21 Scope of subpart.**

Consistent with § 32.1, this subpart contains provisions applicable to claims made under the Act—

(a) At 42 U.S.C. 3796(b); or

(b) At 42 U.S.C. 3796c–1 or Public Law 107–37, with respect to a public safety officer's disability.

#### **§ 32.22 Time for filing claim.**

(a) Unless, for good cause shown, the Director extends the time for filing, no

claim shall be considered if it is filed with the PSOB Office after the later of—

(1) Three years after the injury date; or

(2) One year after—

(i) A final determination of entitlement to receive, or of denial of, the benefits, if any, described in § 32.25(a)(1)(i); or

(ii) The receipt of the certification described in § 32.25(a)(1)(ii).

(b) A claimant may file with his claim such supporting documentary, electronic, video, or other nonphysical evidence and legal arguments as he may wish to provide.

[73 FR 76535, Dec. 17, 2008]

#### **§ 32.23 Definitions.**

*Direct result of an injury*—A disability results directly from an injury if the injury is a substantial factor in bringing the disability about.

*Gainful work* means full-or part-time activity that actually is compensated or commonly is compensated.

*Medical certainty*—A fact exists to a degree of medical certainty, when, pursuant to a medical assessment, the fact is demonstrated by convincing evidence.

*Permanently disabled*—An individual is permanently disabled only if there is a degree of medical certainty (given the current state of medicine in the United States) that his disabled condition—

(1) Will progressively deteriorate or remain constant, over his expected lifetime; or

(2) Otherwise has reached maximum medical improvement.

*Product of an injury*—Permanent and total disability is produced by a catastrophic injury suffered as a direct and proximate result of a personal injury if the disability is a direct result of the personal injury.

*Residual functional capacity* means that which an individual still is capable of doing, as shown by medical (and, as appropriate, vocational) assessment, despite a disability.

*Totally disabled*—An individual is totally disabled only if there is a degree of medical certainty (given the current state of medicine in the United States) that his residual functional capacity is